HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition, No. 2183(S/S) 2001
(Old No. 35640 of 1999)

Sri Kailash Chandra Joshi S/o Sri Moti Ram,
Resident of Village Railakote,
Tehsil and District Almora. ------- Petitioner.

Vs.

1. Director, Mahila Kalyan,
   Jawahar Bhawan, Lucknow,
2. Deputy Chief Probationary Officer,
   Kumaon Division, Nainital,
3. District Probation Officer,
   Pithoragarh. -----Respondents.

Sri Alok Mehra, Adv. And Sri Manoj Tewari, learned counsel for the petitioner,
Learned Standing Counsel for respondent nos. 2 & 3,

Hon'ble M.M. Ghildiyal, J.

Heard Sri Alok Mehra, Adv. holding brief of Sri Manoj Tewari, learned counsel for the petitioner and learned Standing Counsel for the State Uttaranchal/respondents nos. 2 & 3.

2. This writ petition has been filed by the petitioner for the following reliefs:-

i. To issue a writ, order or direction in the nature of certiorari for quashing the impugned order of cancellation dated 20.07.1999 (annexure -5 to the writ petition) passed by the respondent no. 1,

ii. To issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the functioning of the petitioner on the post of Peon in the office of District Probation Officer, Pithoragarh,

iii. To issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the

regular salary for the post of Peon to the petitioner from month to month as and when it falls due,

iv. To issue any other suitable order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case,

V. To the cost of the petitioner in favour of the petitioner.

3. Submission of the petitioner is that, he was appointed as Class IV employee in the office of District Probation Officer, Almora and in pursuance of the appointment order, he joined his duties on 24th March 1998. In May 1988, the petitioner was transferred to Pithoragarh and in compliance of the transfer order he joined in the district of Pithoragarh. Counsel for the petitioner has submitted that vide the impugned order dated 20.07.1999, the petitioner was terminated from his services on the ground that the appointment of the petitioner was made by a person who was Officiating on the post of Appointing Authority at the relevant time and further that a duly selection process was not conducted in making the appointment of the petitioner.

4. The Allahabad High Court on 21.08.1999 has stayed operation of the impugned order dated 20.07.1999 and in pursuance of the order passed by the Allahabad High Court, the petitioner is still continuing on the post.

5. Counsel for the petitioner has vehemently submitted that the impugned order, terminating the services of the petitioner, has been passed without giving opportunity of hearing to the petitioner. In the counter affidavit, also the respondents have not disputed that the petitioner was ever afforded any opportunity of hearing. It is well settled law that when a person has been provided appointment, his appointment cannot be

called without giving him an opportunity of hearing, and such an action would be against the Principals of Natural Justice. Keeping in view the facts and circumstances of the case, the writ petition deserves to be allowed.

6. Accordingly, the writ petition is allowed. The order dated 20.07.1999 passed by the Director, Mahila Kalyan, Jawah Bhawan, Lucknow/respondent no. 1 is hereby quashed.

(M.M. Ghildiyal, J.)

May 19, 2006:
NCM: